

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

John Michael Northrop,

No. CV-17-04765-PHX-DGC (JFM)

Petitioner,

ORDER

V.

Charles L. Ryan, et al.,

Respondents.

Petitioner John Michael Northrop filed a petition under 28 U.S.C. § 2254 to vacate, set aside, or correct his sentence. Doc. 1. Magistrate Judge James F. Metcalf issued a Report and Recommendation (“R&R”) recommending that the Court deny the petition as untimely and without merit. Doc. 15 at 5, 16-22. The Court will accept the R&R and deny the petition.

I. Background.

Petitioner pled guilty to one count of sexual conduct and two amended counts of attempted sexual conduct relating to a victim under 15 years of age, both designated as dangerous crimes against children. Docs. 15 at 2; 1 at 2. Petitioner was sentenced to 14 years in prison followed by lifetime probation. Doc. 15 at 2. In his § 2254 petition, Petitioner asks the Court to discharge him from custody, restore his rights, and return seized property. Doc. 1 at 8. Petitioner argues that the Arizona Superior Court lacked subject matter jurisdiction over his criminal case, and he asserts various deficiencies in his indictment and conviction. *Id.*

1 **II. Legal Standard.**

2 This Court “may accept, reject, or modify, in whole or in part, the findings or
3 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “[T]he district
4 judge must review the magistrate judge’s findings and recommendations *de novo* if
5 objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
6 (9th Cir. 2003) (en banc). District courts are not required to conduct “any review at all . . .
7 of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149
8 (1985); *see also* 28 U.S.C. § 636(b)(1).

9 **III. Discussion.**

10 Petitioner filed four objections to the R&R. *See* Doc. 16 at 5-13. Petitioner objects
11 to Judge Metcalf’s findings that: (1) the Arizona Superior Court was not acting as a de
12 facto federal court when it convicted and sentenced Petitioner; (2) Petitioner’s § 2254
13 motion is untimely; (3) Petitioner’s crime of conviction is properly considered a dangerous
14 crime against children under state law; and (4) Petitioner’s argument regarding the
15 Enactment Clause of the Arizona Constitution is without merit. *Id.* The Court will first
16 address the timeliness of Petitioner’s petition.

17 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a
18 one-year deadline for filing an initial habeas petition, running from “the date on which the
19 judgment became final by the conclusion of direct review or the expiration of the time for
20 seeking such review.” 28 U.S.C. § 2244(d). Arizona’s Rule 32 of-right proceeding,
21 available to criminal defendants who plead guilty, is considered a form of direct review for
22 purposes of determining whether the statute of limitations has run. *Summers v. Schriro*,
23 481 F.3d 710, 716-17 (9th Cir. 2007). Defendants convicted in Arizona state court have
24 90 days after sentencing to file a timely petition for post-conviction relief (“PCR”). *See*
25 Ariz. R. Crim. P. 32.4.¹

26
27 ¹ Respondents and Judge Metcalf disagree on whether Arizona Rule of Criminal
28 Procedure 1.3(a) applies in this case, which might have provided an additional five days
for Petitioner to file a timely PCR petition. *See* Doc. 12 at 9; 15 at 10. But the applicability
of Rule 1.3 is not dispositive because Petitioner filed his first PCR petition on January 8,
2018, more than four years after his sentencing. Doc. 15 at 2-3.

1 Petitioner was sentenced on September 25, 2013, and his conviction became final
2 on December 24, 2013, when the 90-day deadline expired and Petitioner had not filed
3 notice of a PCR petition. Doc. 15 at 10. Petitioner had one year from December 25, 2013
4 to file his § 2254 petition for a writ of habeas corpus. 28 U.S.C. § 2244(d). Petitioner did
5 not file his petition until December 27, 2017. Doc. 1. Thus, in the absence of equitable
6 tolling, the Court must dismiss Petitioner’s petition as untimely.

7 A petitioner bears the burden of showing that equitable tolling is appropriate.
8 *Raspberry v. Garcia*, 448 F.3d 1150, 1153 (9th Cir. 2006). To do so, a petitioner must
9 show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary
10 circumstance stood in his way.” *Id.* (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418
11 (2005)).

12 Petitioner argues that “there was no conviction and there is no deadline” because
13 “no conviction was entered” in the Arizona Superior Court. Doc. 16 at 7-8. He also argues
14 that he is entitled to equitable tolling because the State violated the Sixth and Fourteenth
15 Amendments by “depriv[ing] Petitioner of his due process right to be informed of the
16 nature and cause of the accusation,” and that he had no knowledge of the “facts necessary
17 to constitute the offenses of convictions and opportunity for objection to them.” *Id.* at 8.

18 To the extent Petitioner advances substantive or procedural arguments regarding his
19 trial, plea, or conviction, his objection fails to provide a basis for equitable tolling. Nor
20 does he otherwise address the R&R’s findings regarding his untimely petition. Petitioner
21 filed his § 2254 petition more than three years after the deadline. He fails to show how he
22 was diligently pursuing his rights and what extraordinary circumstance stood in his way.
23 Nor does he allege any other basis for determining that the statute of limitations began
24 running later than December 25, 2013. Because Petitioner’s petition is untimely, the Court
25 lacks jurisdiction to consider his claims. 28 U.S.C. § 2244; *Pace*, 544 U.S. at 419.

26 **IT IS ORDERED:**

27 1. Magistrate Judge James F. Metcalf’s R&R (Doc. 15) is **accepted** as set forth
28 in this order.

1 2. The Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.
2 § 2254 (Doc. 1) is **denied**.

3 3. The Clerk of Court shall **terminate** this action.

4 4. A certificate of appealability is **denied**.

5 Dated this 30th day of November, 2018.

6 7 David G. Campbell

8 9 David G. Campbell
10 Senior United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28